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APPROVED

CHAPTER

JUN 23 '05

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BY GOVERNOR

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIVE

S.P. 575 - L.D. 1601

An Act To Prevent the Manufacturing of Methamphetamine
in Maine

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 17-A MRSA §1101, sub-§4-A is enacted to read:

4-A. "Methamphetamine precursor drug" means any drug or product possessed by a person that contains in the aggregate a quantity of more than 9 grams of ephedrine, pseudoephedrine or phenylpropanolamine or their salts, isomers or salts of isomers, either alone or in combination with other ingredients, in dry or solid nonliquid form.

Sec. 2. 17-A MRSA §1102, sub-§4, ¶D, as enacted by PL 1987, c. 747, §2, is amended to read:

D. Butyl nitrite or isobutyl nitrite-; and

Sec. 3. 17-A MRSA §1102, sub-§4, ¶E is enacted to read:

E. A methamphetamine precursor drug.

Sec. 4. 17-A MRSA §1107-A, sub-§3, as enacted by PL 2003, c. 61, §7, is repealed and the following enacted in its place:

3. It is an affirmative defense to prosecution under this section that:

A. The substance possessed is industrial hemp; or

B. The substance possessed is a methamphetamine precursor drug and was possessed by the defendant for a legitimate medical purpose.

Sec. 5. 22 MRSA c. 556 is enacted to read:

CHAPTER 556

MAINE METH WATCH PROGRAM

§2351. Maine Meth Watch Program

1. Establishment; purpose. The Office of Substance Abuse shall establish the Maine Meth Watch Program to educate retailers, retail employees and the public in order to help curtail suspicious sales and the theft of methamphetamine precursor drugs as defined in Title 17-A, section 1101, subsection 4-A and to identify the location of illicit methamphetamine manufacturing.

2. Rulemaking. The Office of Substance Abuse may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. 32 MRSA §13702, sub-§25-B is enacted to read:

25-B. Targeted methamphetamine precursor. "Targeted methamphetamine precursor" means any product containing any amount of ephedrine, pseudoephedrine or phenylpropanolamine or their salts, isomers or salts of isomers, either alone or in combination with other ingredients:

A. In dry or solid nonliquid form; or

B. In liquid, liquid-filled capsule or glycerin matrix form if designation as a targeted methamphetamine precursor has been completed by rule adopted pursuant to section 13795, subsection 5, paragraph A.

Sec. 7. 32 MRSA §13795, as amended by PL 1997, c. 437, §46, is further amended to read:

§13795. Photographic proof of identification; discretion to sell or dispense; immunity

1. Photographic proof of identification. As a precondition to filling any prescription or, dispensing any drug or selling any targeted methamphetamine precursor, a pharmacist or person acting at the direction of a pharmacist may demand, inspect and

record proof of identification, including valid photographic identification, from any patient presenting a prescription or any person acting on behalf of the patient or person purchasing a targeted methamphetamine precursor. Valid photographic identification includes but is not limited to the following:

- A. A valid Maine motor vehicle operator's license;
- B. A valid Maine identification card issued under Title 29-A, section 1410;
- C. A valid United States passport;
- D. A valid passport ~~or~~ motor vehicle operator's license of another state, territory, possession or foreign country or official identification card issued by the United States Government only if it:
 - (1) Contains a photograph of the ~~traveler~~ or licensee person presenting the identification;
 - (2) Is encased in tamper-resistant plastic or otherwise possesses indicia of tamper-resistance; and
 - (3) Identifies the ~~traveler's~~ or licensee's person's date of birth; or
- E. Other valid, tamper-resistant, photographic identification as provided in rules adopted by the board pursuant to section 13722, subsection 1, paragraph A and in accordance with Title 5, chapter 375.

2. Refusal to fill prescription, dispense drug or sell targeted methamphetamine precursor; law enforcement reporting. A pharmacist or person acting at the direction of a pharmacist may exercise discretion and refuse to fill any prescription ~~or~~ dispense any drug or sell any targeted methamphetamine precursor if unsatisfied as to the legitimacy or appropriateness of any prescription presented, the validity of any photographic identification or the identity of any patient presenting a prescription or any person acting on behalf of the patient, or the intention of the customer to use the drug or targeted methamphetamine precursor according to the instructions for use. A pharmacist or person acting at the direction of a pharmacist may make a report to a law enforcement agency when that person has reasonable cause to suspect that a prescription is not legitimate or appropriate, that a person has presented photographic identification that is not valid or that a customer has the intention to use a drug or targeted methamphetamine precursor in a manner inconsistent with the instructions for use.

3. Immunity; presumption of good faith. A pharmacist or person acting at the direction of a pharmacist who in good faith and pursuant to subsection 2 refuses to fill any prescription, dispense any drug or sell any targeted methamphetamine precursor or who makes a report to a law enforcement agency is immune from any civil liability that might otherwise result from that action, including, but not limited to, any civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information. In a proceeding regarding immunity from liability, there is a rebuttable presumption of good faith.

4. Record keeping. With regard to purchases of targeted methamphetamine precursors, a pharmacy may keep a log of information about the purchaser, which may include name, date of birth, address and amount of targeted methamphetamine precursors purchased.

5. Rulemaking. The Director of the Office of Substance Abuse within the Department of Health and Human Services may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

A. If the Director of the Maine Drug Enforcement Agency within the Department of Public Safety finds that the ease of availability of liquid, liquid-filled capsule or glycerin matrix forms of products containing ephedrine, pseudoephedrine or phenylpropanolamine or their salts, isomers or salts of isomers, either alone or in combination with other ingredients, referred to in this paragraph as "products," is a threat to the public health, safety and welfare, then the Director of the Maine Drug Enforcement Agency shall notify the Director of the Office of Substance Abuse. The Director of the Office of Substance Abuse shall consult with the joint standing committee of the Legislature having jurisdiction over health and human services matters, providing the reasons for undertaking rulemaking, and may, after consultation, adopt rules designating the products as targeted methamphetamine precursors pursuant to section 13702, subsection 25-B, paragraph B.

B. If the Director of the Maine Drug Enforcement Agency finds that sales of targeted methamphetamine precursors that are made without verifying the identity of the purchaser pose a threat to public health, safety and welfare, then the Director of the Maine Drug Enforcement Agency shall notify the Director of the Office of Substance Abuse. The Director of the Office of Substance Abuse shall consult with the

joint standing committee of the Legislature having jurisdiction over health and human services matters, providing the reasons for undertaking rulemaking, and may, after consultation, adopt rules requiring a person making a sale of a targeted methamphetamine precursor pursuant to section 13796 to demand from the purchaser and to inspect and record prior to the sale proof of identification, including valid photographic identification, and to keep a log of sales.

Sec. 8. 32 MRSA §13796 is enacted to read:

§13796. Retail sale of targeted methamphetamine precursors

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Package" means an item packaged and marked for retail sale that is not designed to be broken down or subdivided for the purpose of retail sale.

B. "Retailer" or "retail store" means a person or business entity engaged in this State in the business of selling products to the general public on a retail basis, including drug outlets.

C. "Sale" or "sold" includes barter, exchange, transfer and gift.

2. Restrictions on packaging. The following restrictions apply to packaging targeted methamphetamine precursors.

A. A targeted methamphetamine precursor may not be sold in a package containing more than 3 grams.

B. A targeted methamphetamine precursor may not be sold unless in a blister package, each blister containing not more than 2 average adult doses, except in single-dose packages of not more than 60 milligrams.

3. Restrictions on the sale of targeted methamphetamine precursors. The following restrictions on location in the retail store, manner of sale and amount of sale apply to sales of targeted methamphetamine precursors.

A. A retailer may not sell more than 3 packages of a targeted methamphetamine precursor per transaction.

B. Except with regard to single-dose packages of not more than 60 milligrams that are kept within 30 feet and in direct line of sight of a staffed cash register or store counter, a retailer must keep targeted methamphetamine precursors in a location that is locked or otherwise not accessible by customers.

C. Except with regard to single-dose packages of not more than 60 milligrams that are kept within 30 feet and in direct line of sight of a staffed cash register or store counter, the sale of targeted methamphetamine precursors must be completed by:

(1) A licensed pharmacist or registered pharmacy technician; or

(2) An employee of the retailer who accepts payment for the targeted methamphetamine precursor as long as:

(a) The employee works under the direct supervision of a pharmacist in the pharmacy area of the retail store; and

(b) A licensed pharmacist or registered pharmacy technician has given individual, express approval for the purchase.

4. Exceptions. The provisions of this section do not apply to a targeted methamphetamine precursor that is obtained by prescription or by sale or transfer in the regular course of lawful business to a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouse operator or common carrier or an agent of that person or entity.

Sec. 9. Maine Meth Watch Program. In establishing the Maine Meth Watch Program under the Maine Revised Statutes, Title 22, chapter 556, the Department of Health and Human Services, Office of Substance Abuse shall use the national effort known as "Meth Watch" first begun in Kansas as a public-private partnership.

Sec. 10. Effective date. This Act takes effect November 1, 2005.